

CENTER FOR DISABILITY ACCESS
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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Scott Johnson,

Plaintiff,

v.

29-41 South Jackson, L.P., a
California Limited Partnership;
29-41 South Jackson, LLC, a
California Limited Liability
Company;
SNGO Inc., a California
Corporation; and Does 1-10,

Defendants.

Case No.

**Complaint For Damages And
Injunctive Relief For Violations
Of: American's With Disabilities
Act; Unruh Civil Rights Act**

Plaintiff Scott Johnson complains of 29-41 South Jackson, L.P., a California Limited Partnership; 29-41 South Jackson, LLC, a California Limited Liability Company; SNGO Inc., a California Corporation; and Does 1-10 ("Defendants"), and alleges as follows:

PARTIES:

1. Plaintiff is a California resident with physical disabilities. Plaintiff is a

1 level C-5 quadriplegic. He cannot walk and also has significant manual
2 dexterity impairments. He uses a wheelchair for mobility and has a specially
3 equipped van.

4 2. Defendants 29-41 South Jackson, L.P. and 29-41 South Jackson, LLC
5 owned the real property located at or about 29 S. Jackson Avenue, San Jose,
6 California, in January 2019.

7 3. Defendants 29-41 South Jackson, L.P. and 29-41 South Jackson, LLC
8 owned the real property located at or about 29 S. Jackson Avenue, San Jose,
9 California, in March 2019.

10 4. Defendants 29-41 South Jackson, L.P. and 29-41 South Jackson, LLC
11 own the real property located at or about 29 S. Jackson Avenue, San Jose,
12 California, currently.

13 5. Defendant SNGO Inc. owned Shop-N-Go located at or about 29 S.
14 Jackson Avenue, San Jose, California, in January 2019.

15 6. Defendant SNGO Inc. owned Shop-N-Go located at or about 29 S.
16 Jackson Avenue, San Jose, California, in March 2019.

17 7. Defendant SNGO Inc. owns Shop-N-Go ("Store") located at or about 29
18 S. Jackson Avenue, San Jose, California, currently.

19 8. Plaintiff does not know the true names of Defendants, their business
20 capacities, their ownership connection to the property and business, or their
21 relative responsibilities in causing the access violations herein complained of,
22 and alleges a joint venture and common enterprise by all such Defendants.
23 Plaintiff is informed and believes that each of the Defendants herein,
24 including Does 1 through 10, inclusive, is responsible in some capacity for the
25 events herein alleged, or is a necessary party for obtaining appropriate relief.
26 Plaintiff will seek leave to amend when the true names, capacities,
27 connections, and responsibilities of the Defendants and Does 1 through 10,
28 inclusive, are ascertained.

JURISDICTION & VENUE:

9. The Court has subject matter jurisdiction over the action pursuant to 28 U.S.C. § 1331 and § 1343(a)(3) & (a)(4) for violations of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12101, et seq.

10. Pursuant to supplemental jurisdiction, an attendant and related cause of action, arising from the same nucleus of operative facts and arising out of the same transactions, is also brought under California's Unruh Civil Rights Act, which act expressly incorporates the Americans with Disabilities Act.

11. Venue is proper in this court pursuant to 28 U.S.C. § 1391(b) and is founded on the fact that the real property which is the subject of this action is located in this district and that Plaintiff's cause of action arose in this district.

FACTUAL ALLEGATIONS:

12. Plaintiff went to the Store in January 2019 (twice) and March 2019 with the intention to avail himself of its goods, motivated in part to determine if the defendants comply with the disability access laws.

13. The Store is a facility open to the public, a place of public accommodation, and a business establishment.

14. Parking spaces are one of the facilities, privileges, and advantages offered by Defendants to patrons of the Store.

15. Unfortunately, on the dates of the plaintiff's visits, the defendants did not provide accessible parking in conformance with the ADA Standards.¹

16. Currently, the defendants do not provide accessible parking in conformance with the ADA Standards.

17. Entrance into the Store is another one of the facilities, privileges, and

¹ For example, there was no access aisle that accompanied the parking stall ostensibly reserved for persons with disabilities. On information and belief there are other issues with the parking that render it non-compliant. Those issues will be fleshed out in discovery and inspections. The plaintiff seeks to have fully compliant parking provided.

1 advantages offered by Defendants to patrons of the Store.

2 18. Unfortunately, on the dates of the plaintiff's visits, the defendants did
3 not provide accessible door hardware in conformance with the ADA
4 Standards.

5 19. Currently, the defendants do not provide accessible entrance in
6 conformance with the ADA Standards.

7 20. Plaintiff personally encountered these barriers.

8 21. By failing to provide accessible facilities, the defendants denied the
9 plaintiff full and equal access.

10 22. The lack of accessible facilities created difficulty and discomfort for the
11 Plaintiff.

12 23. The defendants have failed to maintain in working and useable
13 conditions those features required to provide ready access to persons with
14 disabilities.

15 24. The barriers identified above are easily removed without much
16 difficulty or expense. They are the types of barriers identified by the
17 Department of Justice as presumably readily achievable to remove and, in fact,
18 these barriers are readily achievable to remove. Moreover, there are numerous
19 alternative accommodations that could be made to provide a greater level of
20 access if complete removal were not achievable.

21 25. Plaintiff will return to the Store to avail himself of its goods and to
22 determine compliance with the disability access laws once it is represented to
23 him that the Store and its facilities are accessible. Plaintiff is currently deterred
24 from doing so because of his knowledge of the existing barriers and his
25 uncertainty about the existence of yet other barriers on the site. If the barriers
26 are not removed, the plaintiff will face unlawful and discriminatory barriers
27 again.

28 26. Given the obvious and blatant nature of the barriers and violations

1 alleged herein, the plaintiff alleges, on information and belief, that there are
 2 other violations and barriers on the site that relate to his disability. Plaintiff will
 3 amend the complaint, to provide proper notice regarding the scope of this
 4 lawsuit, once he conducts a site inspection. However, please be on notice that
 5 the plaintiff seeks to have all barriers related to his disability remedied. See
 6 *Doran v. 7-11*, 524 F.3d 1034 (9th Cir. 2008) (holding that once a plaintiff
 7 encounters one barrier at a site, he can sue to have all barriers that relate to his
 8 disability removed regardless of whether he personally encountered them).

9
 10 **I. FIRST CAUSE OF ACTION: VIOLATION OF THE AMERICANS**
 11 **WITH DISABILITIES ACT OF 1990** (On behalf of Plaintiff and against all
 12 Defendants.) (42 U.S.C. section 12101, et seq.)

13 27. Plaintiff re-pleads and incorporates by reference, as if fully set forth
 14 again herein, the allegations contained in all prior paragraphs of this
 15 complaint.

16 28. Under the ADA, it is an act of discrimination to fail to ensure that the
 17 privileges, advantages, accommodations, facilities, goods and services of any
 18 place of public accommodation is offered on a full and equal basis by anyone
 19 who owns, leases, or operates a place of public accommodation. See 42 U.S.C.
 20 § 12182(a). Discrimination is defined, inter alia, as follows:

- 21 a. A failure to make reasonable modifications in policies, practices,
 22 or procedures, when such modifications are necessary to afford
 23 goods, services, facilities, privileges, advantages, or
 24 accommodations to individuals with disabilities, unless the
 25 accommodation would work a fundamental alteration of those
 26 services and facilities. 42 U.S.C. § 12182(b)(2)(A)(ii).
- 27 b. A failure to remove architectural barriers where such removal is
 28 readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). Barriers are

1 defined by reference to the ADA Standards.

2 c. A failure to make alterations in such a manner that, to the
3 maximum extent feasible, the altered portions of the facility are
4 readily accessible to and usable by individuals with disabilities,
5 including individuals who use wheelchairs or to ensure that, to the
6 maximum extent feasible, the path of travel to the altered area and
7 the bathrooms, telephones, and drinking fountains serving the
8 altered area, are readily accessible to and usable by individuals
9 with disabilities. 42 U.S.C. § 12183(a)(2).

10 29. When a business provides parking for its customers, it must provide
11 accessible parking in compliance with the ADA Standards.

12 30. Here, the lack of accessible parking in compliance with the ADA
13 Standards is a violation of the law.

14 31. When a business provides an entrance, it must provide an accessible
15 entrance in compliance with the ADA Standards.

16 32. Here, no such accessible entrance has been provided in compliance with
17 the ADA Standards.

18 33. The Safe Harbor provisions of the 2010 Standards are not applicable
19 here because the conditions challenged in this lawsuit do not comply with the
20 1991 Standards.

21 34. A public accommodation must maintain in operable working condition
22 those features of its facilities and equipment that are required to be readily
23 accessible to and usable by persons with disabilities. 28 C.F.R. § 36.211(a).

24 35. Here, the failure to ensure that the accessible facilities were available
25 and ready to be used by the plaintiff is a violation of the law.

1 **II. SECOND CAUSE OF ACTION: VIOLATION OF THE UNRUH CIVIL**
2 **RIGHTS ACT** (On behalf of Plaintiff and against all Defendants.) (Cal. Civ.
3 Code § 51-53.)

4 36. Plaintiff repleads and incorporates by reference, as if fully set forth
5 again herein, the allegations contained in all prior paragraphs of this
6 complaint. The Unruh Civil Rights Act (“Unruh Act”) guarantees, inter alia,
7 that persons with disabilities are entitled to full and equal accommodations,
8 advantages, facilities, privileges, or services in all business establishment of
9 every kind whatsoever within the jurisdiction of the State of California. Cal.
10 Civ. Code § 51(b).

11 37. The Unruh Act provides that a violation of the ADA is a violation of the
12 Unruh Act. Cal. Civ. Code, § 51(f).

13 38. Defendants’ acts and omissions, as herein alleged, have violated the
14 Unruh Act by, inter alia, denying, or aiding, or inciting the denial of, Plaintiff’s
15 rights to full and equal use of the accommodations, advantages, facilities,
16 privileges, or services offered.

17 39. Because the violation of the Unruh Civil Rights Act resulted in difficulty,
18 discomfort or embarrassment for the plaintiff, the defendants are also each
19 responsible for statutory damages, i.e., a civil penalty. (Civ. Code § 55.56(a)-
20 (c).)

21 40. Although the plaintiff was markedly frustrated by facing discriminatory
22 barriers, even manifesting itself with minor and fleeting physical symptoms,
23 the plaintiff does not value this very modest physical personal injury greater
24 than the amount of the statutory damages.

1 **PRAYER:**

2 Wherefore, Plaintiff prays that this Court award damages and provide
3 relief as follows:

4 1. For injunctive relief, compelling Defendants to comply with the
5 Americans with Disabilities Act and the Unruh Civil Rights Act. Note: the
6 plaintiff is not invoking section 55 of the California Civil Code and is not
7 seeking injunctive relief under the Disabled Persons Act at all.

8 2. Damages under the Unruh Civil Rights Act, which provides for actual
9 damages and a statutory minimum of \$4,000 for each offense.

10 3. Reasonable attorney fees, litigation expenses and costs of suit, pursuant
11 to 42 U.S.C. § 12205; and Cal. Civ. Code §§ 52.

12 Dated: May 16, 2019

CENTER FOR DISABILITY ACCESS

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14 By:



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16 _____
17 Amanda Seabock, Esq.
18 Attorney for plaintiff
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